

## Message Text

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ACTION EUR-12

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INFO USMISSION USBERLIN  
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AMCONSUL DUSSELDORF  
AMCONSUL FRANKFURT  
AMCONSUL HAMBURG  
AMCONSUL MUNICH  
USCINCEUR VAIHINGEN GE  
CINCUSAREUR HEIDELBERG GE

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USCINCEUR AND CINCUSAREUR FOR POLADS

E.O. 11652: N/A  
TAGS: PINT, GW  
SUBJECT: RENEWAL OF HEARINGS IN FILBINGER LAWSUIT

REF: STUTTGART 1132

1. SUMMARY. RENEWED COURT HEARING JUNE 13 IN FILBINGER LAWSUIT AGAINST HOCHHUTH AND DIE ZEIT WILL RESULT IN FURTHER PROBING INTO THE EVENTS OF THE PAST, WHICH WOULD PROBABLY HAVE BEST BEEN AVOIDED. TACTICS OF FILBINGER'S DEFENSE COUNSEL SEEM OPEN TO QUESTION. NEXT COURT HEARING IS SCHEDULED FOR JULY 13. END SUMMARY.

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2. FURTHER HEARINGS WERE HELD IN A STUTTGART COURT JUNE 13 IN THE LAWSUIT THAT BADEN-WUERTEMBERG MINISTER-PRESIDENT FILBINGER HAS BROUGHT AGAINST AUTHOR ROLF HOCHHUTH AND THE NEWSPAPER DIE ZEIT. THE COURT SCHEDULED THE NEXT HEARING FOR JULY 13. AT ISSUE IS WHETHER THE COURT IS TO LET STAND ITS INTERIM INJUNCTION HANDED DOWN ON MAY 23 (WHICH LAWYERS FOR HOCHHUTH AND DIE ZEIT HAVE

NOW SAID THEY WOULD NOT CONTEST OR APPEAL) OR WHETHER, AS FILBINGER'S LAWYERS DEMAND, THE COURT GOES ON TO ENJOIN HOCHHUTH AND DIE ZEIT FROM FURTHER PUBLICATION OF REMARKS OFFENSIVE TO FILBINGER. AS WE UNDERSTAND IT, THE WHOLE LAWSUIT HINGES ON ONLY ONE SENTENCE FROM HOCHHUTH'S MANUSCRIPT AS PUBLISHED IN DIE ZEIT. ("AFTER ALL, THE MINISTER-PRESIDENT OF THIS LAND, DR. FILBINGER, AS HITLER'S JUDGE FOR THE NAVY, WHO PROSECUTED A GERMAN SAILOR WITH NAZI LAWS EVEN IN BRITISH CAPTIVITY AND AFTER HITLER'S DEATH, WAS SUCH A TERRIBLE LAWYER THAT ONE HAS TO ASSUME -- SINCE THE JUDGES OF THE NAVY WERE MORE CLEVER THAN THOSE OF THE ARMY AND THE AIR FORCE AND DESTROYED ALL THEIR FILES AT THE END OF THE WAR -- THAT HE IS AT LARGE ONLY OWING TO THE SILENCE OF THOSE WHO KNEW HIM.") IN ITS MAY 23 INTERIM RULING THE COURT HAD DEEMED ONLY THAT IT WAS IMPROPER FOR HOCHHUTH TO ALLEGE THAT FILBINGER HAD BEEN PROTECTED BY A CONSPIRACY OF SILENCE.

3. SINCE, AT THE JUNE 13 HEARING, FILBINGER'S LAWYERS PRESSED FOR BROADENING OF THE INJUNCTION TO IMBRACE THE REST OF THE OFFENDING SENTENCE (AS QUOTED ABOVE), THE COURT CONCLUDED THAT IT WAS OBLIGED TO EXAMINE ANEW WHETHER FILBINGER HAD REALLY BEEN COMPELLED TO ASK FOR THE DEATH SENTENCE IN THE GROEGER CASE AND WHETHER GROEGER'S EXECUTION HAD HAD TO BE CARRIED OUT SO PROMPTLY. THE COURT SAID THAT FILBINGER'S LAWYERS HAD THUS FAR BROUGHT FORTH LIMITED OFFICIAL USE

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NO NEW FACTS THAT WOULD JUSTIFY ALTERING THE COURT'S ORIGINAL FINDINGS, I.E., HOCHHUTH COULD SAY THAT FILBINGER HAD BEEN A "TERRIBLE LAWYER." HOCHHUTH'S LAWYER TOLD THE COURT THAT TO HIS KNOWLEDGE FILBINGER, WHILE IN THE GERMAN NAVY, HAD BEEN INVOLVED IN FORTY-ONE OTHER CASES. ALL THESE CASES WOULD HAVE TO BE REVIEWED, HE ARGUED, RATHER THAN THE ONE OR TWO CASES ON WHICH FILBINGER'S DEFENSE APPEARS TO WANT THE COURT TO BASE ITS JUDGMENT. (WE NOTE THAT IN LAST WEEK'S ISSUE THE NEWS-MAGAZINE DER SPIEGEL REPORTED THAT FILBINGER HAD TURNED DOWN EARLIER THIS MONTH DER SPIEGEL'S REQUEST FOR ACCESS TO THE FEDERAL ARCHIVES AT AACHEN TO SEARCH FOR RECORDS ON FILBINGER'S PAST.)

4. ONE OF FILBINGER'S NEW LAWYERS, JOSEF AUGSTEIN (WHO, INTERESTINGLY ENOUGH, IS THE BROTHER OF THE EDITOR OF DER SPIEGEL) WAS BOLD ENOUGH TO QUESTION WHETHER THE BENCH WAS COMPETENT TO PASS JUDGMENT INASMUCH AS THE STUTTGART JUDGES WERE TOO YOUNG TO HAVE LIVED THROUGH THE NAZI PERIOD,

AND, SO THE PRESS REPORTS, HE ADDED THAT THOSE WHO CRITICIZE FILBINGER WOULD BE THE FIRST TO SHOUT "HEIL HITLER"

IF A SITUATION SIMILAR TO THE NAZI PERIOD EXISTED TODAY.

5. COMMENT: ONE WONDERS WHETHER FILBINGER IS WELL SERVED BY HIS DEFENSE COUNSEL AND WHAT HE AND THEY HAVE TO GAIN BY THE TACTICS DISPLAYED IN THE COURTROOM ON JUNE 13. A TV NEWSCAST COMMENTED ON THE EVENING OF JUNE 13 THAT HAVING THE COURT AGAIN REVIEW THE RECORD OF THE GROEGER TRIAL AND FILBINGER'S ROLE THEREIN WAS PRECISELY WHAT THE STAATSMINISTERIUM HAD WANTED TO AVOID. AS FOR DELVING FURTHER INTO FILBINGER'S PAST BY RAKING OVER OTHER CASES IN WHICH HE MAY HAVE BEEN INVOLVED AS A NAVY JUDGE, WHAT CAN BE FORGIVEN DER SPIEGEL UNDER THE LABEL OF INVESTIGATIVE REPORTING MIGHT SMACK OF SITCHHUNT BY THE HOCHHUTH/DIE ZEIT DEFENSE COUNSEL HAD LIMITED OFFICIAL USE

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NOT FILBINGER'S OWN COUNSEL BY ITS TACTICS PRACTICALLY INVITED THIS FURTHER PROBING INTO FILBINGER'S PAST. WITH FRIENDS LIKE THESE FILBINGER HARDLY NEEDS ENEMIES. MILLER

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